

December 14, 2018

The Honorable Ajit Pai, Chairman
The Honorable Michael O’Rielly, Commissioner
The Honorable Brendan Carr, Commissioner
The Honorable Jessica Rosenworcel, Commissioner

Federal Communications Commission
455 12th Street, Southwest
Washington, DC, 20544

Dear Chairman Pai and Commissioners,

I write to support the Reply Comments of the Cable Act Preservation Alliance (“CAPA”) and to disapprove of the proposals and tentative conclusions set forth in the FCC’s September 25 Further Notice of Proposed Rule Making in *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket 05- 311.

I have worked in this industry since the 1980’s as a cable television consultant specializing in needs assessments, a PEG access station manager, a municipal cable regulator, and as the executive director of Wisconsin Community Media and I have a different perspective from the NCTA.

I take issue with the NCTA’s characterization of the local franchising process as tilted heavily toward municipalities. The Cable Act places the task of crafting a renewal proposal on the cable operator and the burden of showing there are cable-related needs and interests to be served on municipalities. The renewal proposal must “meet the future cable-related community needs and interests,” but it also must “take into account the cost of meeting such needs and interests.”¹ During negotiations, cable operators clearly have the opportunity to show “this just costs us too much” or “we don’t see the evidence of a real need here.” While the NCTA provides examples of “abuses,” I would like to suggest that the in-kind services cable operators agree to in negotiations in town after town after town across the country are not out of line in terms of cost for cable operators. The law provides for options to challenge nonmonetary franchise provisions that operators believe are too costly through the formal renewal process² and through judicial review.³

¹ 47 USC 546(c)(1)(D)

² 47 U.S.C. § 546(c)(2)

³ 47 U.S.C. § 546(e)

The NCTA laments the fact that operators have “billions of dollars in sunk costs in cable systems and they cannot just walk away from these systems.” No, they can’t. But municipalities cannot walk away either. What other company would they turn to? Video providers are typically monopolies that cover large regions. A handful of companies control the lion’s share of the systems in the country. Charter Spectrum, the third largest provider in the country, serves nearly the entire state of Wisconsin and has competition in only a subsection of its territory. It is the municipalities -- the thousands of small towns and cities across the nation -- who lack the leverage and the money to counter the actions of cable companies. If a cable company refuses to provide a service due to its cost, what really can a municipality do? The vast majority of municipalities simply do not have the funds to challenge a large corporation.

In Wisconsin, the cable industry and AT&T successfully stripped all municipalities of the right to assess a PEG fee or request Institutional Networks or cable service for schools and public buildings or indeed any in-kind services. Wisconsin municipalities are now operating under a state cable franchise law. Municipalities were unsuccessful at countering a long and intense lobbying campaign by video providers that included television and newspaper ads, commissioned reports that affirmed their view, an astroturf group called TV for Us, a statewide survey and legions of paid lobbyists, which ultimately succeeded in pressuring the legislature to see things their way in 2007. As someone who had a front row seat for this campaign, it is really hard for me to see the cable industry as the abused and maligned player.

While the NCTA seems intent on defining franchise “fees” in an overly broad way to include in-kind “services,” it also seems intent on defining PEG “capital costs” narrowly. The Cable Act says the term franchise fee does not include “capital costs, which are required by the franchise to be incurred by the cable operator for public educational, or governmental access facilities.”⁴ In its definitions section, the Cable Act defines “public, educational, or governmental access facilities” as both “channel capacity designated for public, educational or governmental use and facilities and equipment for the use of such channel capacity.”⁵ The NCTA is keen to redefine PEG capital costs as only the “costs associated with the construction of PEG facilities.” This is just not what the law says.

It is obvious that cable operators want to get rid of the obligation to provide communities with PEG access channels and facilities. But these obligations are at the heart of the Cable Act.

You have heard from thousands of people in this rulemaking – more than 9,000 people, who have asked this commission not to tamper with what is working across the country. If you listen to the protestations of the industry rather than honoring the intent of the law, you will destroy

⁴ 47 USC 542(g)(2)(C)

⁵ 47 USC 522(16)

PEG access television, because municipalities will not be able to bear the new costs thrust on them.


Please do not turn a deaf ear to what all of these people are telling you. They are making media work for people. These centers are creating an amazing amount of programming about their communities, thousands of hours a day, for a tiny fraction of what it would cost on a commercial basis. And this programming is by people and for people in their own community. People they know. People maybe they should get to know. These stations help build a sense of community.

The Commission has the power to destroy what communities across the country have lovingly built. I truly hope you make the right choice here. Because once you pull away the support for PEG access television, even if a higher court overturns your action, it will be too late for a lot of communities, unless there is an injunction against implementation.

A rulemaking that implements the Cable Act should not undermine its goals.

Thank you for your consideration

Sincerely,

A handwritten signature in cursive script that reads "Mary Cardona". The signature is fluid and elegant, with the first name "Mary" and last name "Cardona" clearly distinguishable.

Mary Cardona
Community Communications Consulting
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